

# **EXHIBIT 10**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

-----:  
i2 INC., et al., :  
Plaintiffs, :  
-vs- : Case No. 1:10-cv-885  
PALANTIR TECHNOLOGIES, INC., :  
et al., :  
Defendants. :  
-----:

HEARING ON MOTIONS

October 29, 2010

Before: Mag. Judge John F. Anderson

APPEARANCES:

Christopher J. Sundermeier and Robert R. Vieth,  
Counsel for the Plaintiffs

Jon B. Streeter and D. Bradford Hardin, Jr.,  
Counsel for the Defendants

1                   NOTE: The case is called to be heard at 9:32 a.m.  
2 as follows:

3                   THE CLERK: i2 Incorporated, et al. versus Palantir  
4 Technologies, Incorporated, et al., civil action 10-885-cv.

5                   MR. VIETH: Good morning, Your Honor. Robert Vieth  
6 of Cooley. Your Honor, this morning I would like to introduce  
7 the Court to Christopher Sundermeier of our firm. Mr.  
8 Sundermeier is a member of the California Bar. And with the  
9 Court's permission, he will be handling today's argument.

10                  THE COURT: Okay, thank you. Good morning, Mr.  
11 Sundermeier. Good morning, Mr. Vieth.

12                  MR. SUNDERMEIER: Good morning, Your Honor.

13                  MR. HARDIN: Good morning, Your Honor. Bradford  
14 Hardin and my colleague Jon Streeter, who is also a member of  
15 the California Bar, but admitted pro hac vice to the Bar of  
16 this court. He will be arguing the motion this morning on  
17 behalf of Palantir Technologies.

18                  THE COURT: Okay, thank you.

19                  Okay, Mr. Streeter, just to let you know, I have  
20 reviewed all the pleadings that have been filed in the case.  
21 What I intend to do is basically rule on the ones that I am  
22 prepared to rule on, and then I will ask questions about ones  
23 that I seem to have questions about.

24                  So, I am not going to have-- I mean, I have read  
25 all the papers. I think the issues are fairly clear on many

1 of the, many of the document requests, but there are some that  
2 I will need to ask either you, Mr. Streeter, or you, Mr.  
3 Sundermeier, questions about.

4 Before I do that, are there any other-- I mean,  
5 have you all come to resolution of any of the issues-- I  
6 mean, I got the reply yesterday. So, hasn't anything changed  
7 overnight or this morning that you've resolved any of the  
8 matters that are before me now?

9 MR. STREETER: No. We haven't had an opportunity to  
10 update our meet and confer, although I did notice that in the  
11 opposition there was a change of position by i2 on a couple of  
12 categories. Although it doesn't appear that those are changes  
13 of position that would lead to resolution.

14 THE COURT: Okay. Well, on document requests 1, 2,  
15 3 and 4, those four requests that relate to the  
16 interoperability issues, Mr. Streeter, I will tell you, and  
17 this goes for everybody on this case, that document requests  
18 that go for all documents and things relating to something are  
19 going to be hard to get this Court to enforce.

20 I do find based on the information that was  
21 contained in the pleadings that have been provided, that the,  
22 I guess, agreement of i2 in this case to produce the documents  
23 that are related to the interoperability of the i2 products at  
24 issue in this case with the Palantir products and documents  
25 that reflect communications from third parties that i2

1 products be made interoperable with the Palantir software, is  
2 an appropriate response to those four document requests.

3 So, as set out in the opposition as to what was  
4 agreed to or what was proposed as their responses to document  
5 requests 1, 2, 3 and 4 I think is appropriate.

6 For document requests 21, 22, 23 and 24 having to do  
7 with the license agreements and the time period for doing  
8 that, I think that the issues got narrowed a little bit in the  
9 pleadings, but I think the one issue that I see and I'm  
10 prepared to rule on without any argument is the time period of  
11 the license agreements.

12 So, I do want i2 to produce the representative forms  
13 of its license agreements for its products at issue and for  
14 every government customer, but I want it to be for those  
15 license agreements that were in effect on March 2006 and that  
16 were entered after March 2006, not a time limitation of only  
17 entered into after March 2006. And a copy of the-- Yes.

18 MR. SUNDERMEIER: May I comment, Your Honor?

19 THE COURT: Comment? Well, you can get a  
20 clarification. I am not going to hear any argument on it, but  
21 is there anything that is unclear about that ruling?

22 MR. SUNDERMEIER: No, except that that, because it  
23 is a perpetual license, that means every license that the  
24 company since 1990 has entered into.

25 THE COURT: That's different than its form license.

1 So, if you have used different forms in the past and those  
2 forms are still in existence and are relevant to the time  
3 period in March of 2006, then you will have to produce those  
4 representative license agreements.

5 I also am going to require you to produce copies of  
6 any contracts or agreements with terms that are different from  
7 those form agreements, which is I think something you had  
8 indicated you would be willing to do.

9 MR. STREETER: Your Honor, a point of clarification  
10 on that. There could well be contested issues concerning the  
11 royalty rates in the licenses, and I would understand every  
12 unique royalty rate to be something that is not necessarily  
13 part of a form agreement.

14 So, we don't want to see a blank form agreement with  
15 no royalty rates. Every individual royalty rate is unique and  
16 ought to be produced.

17 MR. SUNDERMEIER: Your Honor, we don't charge by  
18 royalty rate.

19 THE COURT: Okay. So, I don't think that will be an  
20 issue.

21 MR. STREETER: Well, the level of compensation that  
22 is charged, whether it is a royalty, it could be a flat fee.  
23 Whatever the fee is, the damages experts could well be  
24 addressing what is charged for licenses, and we are entitled  
25 to know what the--

1                   THE COURT: Well, your argument for wanting these  
2 agreements had to do with interoperability and the rights and  
3 the licensing rights. That's the argument that you made in  
4 having me try and rule on these document requests for 21, 22,  
5 23 and 24, that it had to do with the rights that were given  
6 in doing that. It didn't really talk about what had to do  
7 with any damages issues, did you?

8                   MR. STREETER: Well, the reason we would seek the  
9 terms of licenses, Your Honor, goes not only to the technical  
10 issues, but also to the damages issues. And to the extent  
11 that experts are going to be preparing opinions about what  
12 licenses are worth, it seems to us that each unique term that  
13 has to do with how much they charge is not a matter of a form,  
14 it is a unique term and it goes to pricing.

15                  MR. SUNDERMEIER: Your Honor, they have asked for  
16 pricing information. We have agreed to produce pricing  
17 information for our prices for the license. We don't, we  
18 don't charge a royalty. We charge a price for them. And we  
19 have agreed to produce that.

20                  Putting it in the context, license means producing  
21 every license that might have a different price term going  
22 back 20 years, which--

23                  THE COURT: Right. So, to the extent you are asking  
24 for clarification, I'm not requiring them to produce each  
25 license agreement that may have a compensation term that may

1 be different. Only the terms relating to the right to use and  
2 distribute or whatever. And I assume you will be producing  
3 pricing information in another format relating to those.

4 As to document request number 45, you have agreed to  
5 produce, Mr. Sundermeier, the documents that are relating to  
6 the discussions with the Los Angeles Police Department that  
7 relate to interoperability, is that correct?

8 MR. SUNDERMEIER: Yes.

9 THE COURT: I think that's sufficient response to  
10 document request number 45.

11 Turning to 36 and 37, the document requests relating  
12 to profits and costs, the financial statements and costs of  
13 sales and generations, I do think that the discussions that  
14 related or that i2's agreement to produce documents showing  
15 the revenue, profits and costs related to the development and  
16 the sale of the products at issue in this case are sufficient  
17 for 36 and 37.

18 I do think that 38, that i2 should produce documents  
19 that reflect i2's shares in the market for i2 products at  
20 issue.

21 So, I do think that some market share information  
22 and documents, and corollary to that is 39, the documents  
23 relating to competitions, I think in the market for the  
24 products that are alleged in this action. So, both 38 and 39  
25 I think are proper to some extent, but just documents

1 reflecting i2's share of the market for i2 products at issue  
2 and documents reflecting the competition in the market for the  
3 products alleged in this action, is the appropriate, would be  
4 the appropriate responses to 38 and 39.

5 40, I need some discussion on 40, which is all  
6 documents related to any customer of i2 for whom i2 claims it  
7 has lost business or revenue due to the conduct.

8 What is objectionable about number 40, Mr.  
9 Sundermeier?

10 MR. SUNDERMEIER: Well, for example, the FBI. We  
11 have been working with the FBI for many, many years going back  
12 to, I don't know, mid 1990's. Every document-- And those  
13 documents would pertain to technical issues, they would  
14 pertain to-- I mean, it would be a vast amount of information  
15 which has nothing to do with this case.

16 We have agreed to produce the license agreements  
17 with them. We have agreed to produce information relating to,  
18 you know, costs and pricing from us. We have agreed to  
19 produce any information that relates to the actual loss of  
20 that business.

21 But to say, produce everything, every document that  
22 relates to each of the customers that we claim that we lost  
23 business, encompasses a very broad array of irrelevant stuff.

24 We think we've, we think in the other requests and  
25 in this request we have narrowed that so that they are getting

1 a broad scope of what they need. But certainly not every  
2 document that relates to the FBI, for example, would be  
3 relevant or even reasonably calculated to lead to the  
4 discovery of admissible evidence.

5 THE COURT: Okay. Mr. Streeter, what's your  
6 response to that?

7 MR. STREETER: First of all, with respect to time  
8 frame, Your Honor, and this runs throughout the opposition on  
9 a number of the requests, we are not seeking every piece of  
10 paper going back to 1990. They have suggested that the  
11 relevant time frame goes back to 2006, that's reasonable and  
12 fine. They're asking for damages, that's what they claim  
13 going back to that point in time, and we're not requesting  
14 anything more.

15 The customer losses, however, could have a number of  
16 causes. And we're entitled to examine the communications back  
17 and forth within the customer relationship to determine what  
18 in fact, if there was a loss of business, why did the customer  
19 decide to go elsewhere. It may have had to do with some other  
20 competitor of i2, not Palantir. It may have had to do with  
21 the fact that Palantir is not keeping up with the expected  
22 features and advantages that the customer desires in today's  
23 marketplace.

24 THE COURT: But you're asking for all documents  
25 relating to any customer in which they claim that they have

1       lost business. You're not limiting the request as to any area  
2       in which those documents relate to.

3                    MR. STREETER: If there--

4                    THE COURT: Am I right in that fact? I mean, the  
5       way that you've phrased that request, it's any type of a  
6       document that relates to any customer of i2. So, whatever the  
7       customer is, whoever it is, any document that relates to that  
8       customer is what you're asking for in document request number  
9       40?

10                  MR. STREETER: Well, if there is, there is a nexus  
11      clearly to lost business here. And if i2 is going to be  
12      determining for itself what the cause of a diminution in  
13      business is, that's problematic.

14                  We would like to examine the communications, and it  
15      may be communications having to do with servicing a customer  
16      on a broad array of topics. We're not asking for  
17      administrative documents and--

18                  THE COURT: Yes, you are.

19                  MR. STREETER: Well--

20                  THE COURT: I mean, the way that it's phrased,  
21      that's what you're-- All documents. You haven't limited it  
22      in any way whatsoever.

23                  MR. STREETER: Well, we gave examples of the kinds  
24      of things that may be of interest. We want to know about the  
25      financial ebbs and flows of the revenues with particular

1       customers. And the invoicing persons, the work orders that  
2       customers are placing with i2 are going to tell us what the  
3       trends were with particular customers.

4                 So, clearly what we're trying to get at here, Your  
5       Honor, is the issue of causation. And if the limitation that  
6       i2 is proposing is placed on this request, then they are  
7       simply going to be determining for themselves that they have  
8       got lost business with the FBI. It was, it was the fault of  
9       Palantir. So, we'll cherry-pick and give you a handful of  
10      documents relating to that.

11               We're entitled to a more representative sample of  
12      what's going on with a particular customer, and we're not  
13      asking for everything going back to 1990. They have suggested  
14      2006 as a time frame limitation. That's perfectly fine.

15               THE COURT: Well, I can't order them to respond to a  
16      document request that asks for all documents relating to any  
17      customer of i2, from whom i2 claims it has lost business or  
18      revenue.

19               I mean, that just is so overbroad and would have--  
20      Just because they claim that a customer, they have lost  
21      business from a customer, doesn't mean that they should be  
22      required to produce every single document that relates to that  
23      customer even for a time period from 2006 to the present.  
24      That just--

25               MR. STREETER: Your Honor, we're prepared to accept

1 a limitation on this having to do with lost business. But we  
2 don't want to be put in a position where they are determining  
3 that this is something that happened as a result of Palantir,  
4 and we're going to give you communications relating to why  
5 this customer went to Palantir instead of staying with i2.

6 We need more information about the customer  
7 relationship, and we are prepared to accept a limitation  
8 concerning any lost business or any diminution in business.

9 THE COURT: Okay. Well, I do think with the  
10 limitation of documents relating to the loss of business or I  
11 guess loss of business between any customers is appropriate  
12 since you are claiming that you did lose business from these  
13 customers, that producing documents from those customers that  
14 are related to the loss of the business to those customers is  
15 appropriate.

16 So--

17 MR. SUNDERMEIER: And, Your Honor, we have agreed to  
18 that, that's what we said--

19 THE COURT: I do think that's an appropriate  
20 limitation.

21 41, I will limit it, the request of 41 as to price  
22 lists, plans and policies as to the products at issue in this  
23 case. I am not going beyond the products at issue.

24 I don't find that the documents in request 42 are  
25 appropriate in this case. So, what may or may not have been

1 given to Silver Lake Partners really doesn't have any  
2 significant bearing on the issues that are in this case. So,  
3 I am not going to require a response to-- Well, I will  
4 sustain the objection to document request number 42.

5 46--

6 MR. STREETER: Your Honor, you're only entertaining  
7 requests for clarification?

8 THE COURT: Which one are you talking about--

9 MR. STREETER: 42--

10 THE COURT: The documents given to Silver Lake  
11 Partners? I have read the arguments on that. I don't think  
12 it's appropriate for me to order them to respond to that  
13 request.

14 While some of the information that they did may or  
15 may not be relevant, all the documents that they gave I don't  
16 think is relevant. So, as worded, I am not going to require  
17 them to provide a response to 42.

18 46. You know, Mr. Streeter, what is it-- You know,  
19 it concerns me when people serve document requests like this.  
20 Documents sufficient to show current, former and potential  
21 customers.

22 I mean, what do you mean by potential customers?  
23 Everybody in the world could be a potential customer, couldn't  
24 they?

25 MR. STREETER: Well, in the marketing activities

1       that i2 carries out, certainly there are target entities that  
2       they consider to be potential customers. And, no, everybody  
3       in the world is not a potential customer of i2. So, I would  
4       respond in that fashion to Your Honor's last point.

5                  With respect to the reason for this request, any  
6       time i2 shares information that it claims it categorically  
7       will not provide to its competitors, that is flatly  
8       inconsistent with the position they have taken concerning  
9       their license restrictions and the nature of the trade secrets  
10      involved in this case.

11                 And if we were to discovery that on their list of  
12      customers or even their potential customers, and there I mean  
13      entities that they are actively pursuing for business, that  
14      there is a competitor of theirs on that list, we're entitled  
15      to know that because it contradicts fundamentally a position  
16      that they are taking in this case.

17                 They have raised objections on the ground that this  
18      is highly sensitive information. We have a protective order.  
19      They are entitled to mark information that they produce in  
20      this case as available only to litigating counsel only. So,  
21      that ought not to be a concern.

22                 And this does go to something that could be quite  
23      basic to whether or not we even in fact have trade secrets at  
24      issue in this case.

25                 MR. SUNDERMEIER: Your Honor, the first time this

1 argument was ever raised was in the moving papers. It has  
2 never been raised before that.

3 This isn't a request for have you ever sold to your  
4 competitors or if you've ever entered into agreements with  
5 competitors, produce those. We are our producing license  
6 agreements in this case.

7 And even if this were appropriately narrowed, and it  
8 never was before this hearing, producing every potential-- I  
9 mean, our products are sold differently. We sell our product  
10 at a, it is a relatively minimal cost. And we sell it, you  
11 know, in an installation that could be sort of on a single  
12 desk top as opposed to Palantir's, which is, you know, as they  
13 claim a million-plus installation.

14 So, our potential base is huge. And it includes  
15 anybody who does any kind of fraud investigation or any kind  
16 of intelligence analysis. And our actual customers, again,  
17 are highly sensitive information and it's not relevant unless  
18 we're claiming lost profits to it.

19 We are giving them the license agreements. You  
20 know, if the sole issue is have we ever licensed to a  
21 competitor or sold to a competitor, then that is something  
22 that can just simply be asked.

23 THE COURT: Well, I am going to require a response  
24 to 46, but limited to documents sufficient to show customers  
25 of i2 from March 2006 to the present. So, it will be limited

1 in the time scope.

2 I won't require potential customers because I don't  
3 quite understand what that, how one could properly respond to  
4 a request like that.

5 But anyone who was a customer from March 2006 to the  
6 present should be provided on a list. And it can be marked  
7 attorney's eyes only under the protective order.

8 On 54, all documents relating and things relating to  
9 any planning or products undertaken by you to develop updates,  
10 features, enhancements to i2 products in order to meet the  
11 competition.

12 What's the relevance of that, Mr. Streeter?

13 MR. STREETER: It goes to causation, Your Honor.  
14 Our view, Your Honor, is that this is a dated project, product  
15 that i2 sells. And to the degree that they have got losses  
16 that are going to be claimed here, we're entitled to present  
17 evidence that the reason is their deteriorating quality in  
18 failing to meet the needs for the most current features and  
19 the most advanced capabilities of the software in this area.

20 So, that's the reason that we ask for this  
21 particular category.

22 THE COURT: Well, what-- If they're planning to  
23 update their product, what does that have-- I'm still, I'm  
24 still confused as to what relevance that would have to the  
25 issues in this case.

1                   MR. STREETER: If they--

2                   THE COURT: I assume that every software developer  
3 is always looking to enhance its products, you know, from one  
4 version to the next. That they don't just make it and let it  
5 sit there and don't try and do some type of enhancements as  
6 technology and things differ, the needs of customers differ.

7 But--

8                   MR. STREETER: I would respectfully suggest that  
9 that's not, that that's far too general an assumption in this  
10 field.

11                  Our view, again, is that this company has fallen  
12 behind in meeting the needed features that are required by  
13 customers in today's market. And the kinds of things that it  
14 is doing to catch up are highly relevant to the case we will  
15 make in this respect.

16                  So, I mean, you're assuming the answer to the  
17 question, which is that they are current and that they are  
18 always remaining current. If they are working on features  
19 that most competitors in this marketplace installed and began  
20 offering customers five and six years ago, that will certainly  
21 be relevant to the--

22                  THE COURT: Well, what's relevant is whether they  
23 have them or not, whether they are working on them or not.  
24 And you know what their features are on their current  
25 products. And they're saying that, you know, the claim is

1 based on what the current products are, not on what may be in  
2 the work for future products, right?

3 MR. SUNDERMEIER: Your Honor, I would point out too  
4 that since the time that Palantir began obtaining our  
5 products, they got version 6, version 7, version 8, version  
6 8.5, so there have been four versions in the last four years.  
7 We do constantly update.

8 This would be an enormous undertaking. And I'm not,  
9 again, I'm not sure I see the relevance of it, particularly  
10 since if they are asking for information relating to lost, you  
11 know, client dissatisfaction with our products, or client need  
12 for different features, that's the sort of stuff that falls  
13 within other categories we have already agreed to produce.

14 So, we feel like we have already agreed to produce  
15 the core of what they want here. And, you know, there is, if  
16 there are specific things again that they want relating to the  
17 competition, that's different than every document relating to  
18 all our product development.

19 THE COURT: Well, I have ordered some documents to  
20 be produced having to do with competition and what your market  
21 share is and what you will need to do for the products at  
22 issue, and I think that's sufficient. I'm not going to  
23 require a response to 54.

24 To the extent that there is any relevance, and I'm  
25 still at a little bit of a loss to how what they may be

1 working on in the future would be relevant to what they are  
2 providing today and what, whether their product that is  
3 currently in the marketplace is competitive or not, is pretty  
4 tenuous.

5 And I think under the circumstances of the, looking  
6 at what, you know, the importance of the issues at stake in  
7 the action and the burden of producing that type of  
8 information, is certainly far outweighed by any limited  
9 relevance that it may have.

10 Going to I guess now the communication issues in 28.  
11 And I think the opposition that was filed didn't quite, I  
12 couldn't track the number, there were some numbering issues I  
13 think in your opposition. You were--

14 MR. STREETER: I believe that they referred to  
15 request number 1, which was supposed to 28.

16 THE COURT: 28.

17 MR. STREETER: And number 2 was supposed to be 29.

18 THE COURT: 29. And 3 was supposed to be 30.

19 MR. STREETER: Right.

20 MR. SUNDERMEIER: Oh, my apologies.

21 THE COURT: And 4 was supposed to be 55.

22 MR. STREETER: Right.

23 THE COURT: Okay. Well, let me hear from Mr.  
24 Sundermeier on those. I mean, I don't really understand what  
25 your objections are. If you're sending copies of this

1 complaint out and marketing it as something or describing it  
2 in some way, why wouldn't that be relevant to the issues in  
3 this case?

4 MR. SUNDERMEIER: Well, first of all, I think, one,  
5 we're not.

6 THE COURT: Well then--

7 MR. SUNDERMEIER: But again, if the question is as  
8 to whether, is there an agreement to produce, I mean, there  
9 was a press release issued in this case. Our question is  
10 really is this an appropriate avenue of discovery.

11 We have advised them that we aren't sending this  
12 complaint out and that our communications have been extremely  
13 limited. The issue is what's the relevance of customer  
14 communications.

15 They're saying it has to do with the, you know, this  
16 suit is somehow brought in bad faith, but they have got no  
17 claim which would relate to that.

18 So, from our perspective with the communications we  
19 have had with the customers concerning this, is not relevant  
20 to the suit.

21 THE COURT: Well, it depends on what the  
22 communications say. And I can't make a determination as to  
23 whether they are or aren't relevant.

24 You could be sending communications to people  
25 saying, you know, attached is the complaint, we filed this, we

1 don't really believe in it, but we filed it. Or we don't  
2 intend to pursue it. Or you could be making statements, you  
3 know, that are not in your interests that could be binding on  
4 you if they were made by certain individuals.

5 So, I don't see the basis for you not responding to  
6 document requests 28, 29 and 30. I think those, certainly if  
7 they relate to your dissemination of information or  
8 descriptions or summaries of what your claims are in this  
9 matter, could be relevant to the issues in this case.

10 33, Mr. Streeter, what is this one about? This is  
11 all documents related to any instance in which an i2 employee  
12 obtained or requested information about a third party under a  
13 name other than I guess his or her own name.

14 MR. STREETER: Right.

15 THE COURT: This is the two wrongs make a right  
16 request, is that what you're trying to do here?

17 MR. STREETER: Well, first of all, in the opposition  
18 my understanding is that they have agreed to give us documents  
19 relating to attempts to obtain confidential information under  
20 a pseudonym.

21 And the whole COPLINK, LASD situation appears to us  
22 to have involved a situation where there were efforts made to  
23 obtain confidential information from Palantir on behalf of i2,  
24 at least that's what the circumstances suggest.

25 And that is a situation in which i2 was actively

1 trying to combat integration with Palantir. So, it directly  
2 has to do with the pleaded claim that we have about attempts  
3 to defeat any form of interoperability with Palantir. And in  
4 that situation there appears to be some evidence that there  
5 may have been deception involved.

6 So, yes, we're interested in-- It's not a two  
7 wrongs don't make a right situation. But we do have a  
8 specific customer example here where that was done. And so,  
9 we have asked a broader question here about whether there are  
10 any other efforts surreptitiously to obtain confidential  
11 information about Palantir.

12 MR. SUNDERMEIER: Your Honor, if I could address  
13 that. The situation Mr. Streeter is referring to where  
14 Palantir worked with a company that was recently acquired by  
15 i2 called COPLINK occurred before there was any relationship  
16 between i2 and COPLINK.

17 So, I'm not sure what the relevance of that has to  
18 do. It is also a product that is not at issue.

19 Nonetheless, we have agreed to produce any documents  
20 relating to that situation that they are referring to. And  
21 we've also agreed to produce any documents relating to any  
22 surreptitious attempt by us to get information relating to  
23 Palantir, and we've told them in our interrogatories there are  
24 none.

25 So, what they are really doing now is broadening

1       this and asking a sort of broader question, have you ever done  
2       this anywhere else at any other time.

3                   THE COURT: Well--

4                   MR. SUNDERMEIER: And, you know, I don't see the  
5       relevance of that.

6                   THE COURT: Well, let me make sure, your agreement  
7       is to-- Is your agreement to provide them documents that  
8       relate to you're attempts, any attempts, if any, to obtain  
9       confidential information through a pseudonym? Or is it only  
10      confidential information relating to Palantir through a  
11      pseudonym?

12                  MR. SUNDERMEIER: We agreed to do this with respect  
13      to Palantir. When this came up, their justification was,  
14      essentially was two wrongs make a right here. Their  
15      articulation to us was, well, we want to see if you did this  
16      because this relates to our, you know, our unjust, our unclean  
17      hands and our unfair competition potential claims.

18                  We said, look, if there is some concern about  
19      whether we have ever done this with respect to Palantir, we  
20      will provide you with that information. And we responded to  
21      interrogatories saying, there are no such instances where this  
22      occurred.

23                  So, that's what we have agreed to do. Now they have  
24      sort of changed their theories here and the request is, have  
25      we ever obtained, tried to obtain information surreptitiously

1 from someone else.

2           And again, my concern is not, is really is that an  
3 appropriate avenue of discovery? It's not related to an  
4 unclean hands thing. There is not sufficient connection with  
5 this for that to be an appropriate avenue of discovery. It  
6 doesn't relate to their products or competition between our  
7 products.

8           And the incident they are concerned about, we have  
9 agreed to produce documents. And I think they are-- Because  
10 there is no incident there. In fact, the records will reveal  
11 that we did not get anything confidential from them. They in  
12 fact they still have our confidential information.

13           THE COURT: Well--

14           MR. STREETER: Your Honor, there is a broader issue  
15 here that I'm, and I'm somewhat reluctant to go into broader  
16 argument because Your Honor has read the papers and has  
17 indicated an interest only in addressing clarifications to  
18 your rulings, but our counterclaim addresses not just A and B,  
19 the analyst notebook product line. It addresses both of the  
20 product lines that i2 has, including COPLINK.

21           And it has to do with a business practice that i2  
22 follows and that they are pursuing with respect to all of  
23 their products having to do with attempts to block customers  
24 from transferring data that is saved in the i2 products into  
25 competitors' products, something that we believe is required,

1 that is desired by customers and is required by law. And--

2 THE COURT: Well, what law do you think requires  
3 that as opposed to policy?

4 MR. STREETER: It's in statute, it's in the statute,  
5 it's 6 U.S.C. Section 485, et seq. This is, there is an  
6 extensive statutory scheme that we plead in great detail in  
7 our counterclaim that has been implemented by a series of  
8 policy guidelines that set standards in this area which takes  
9 it out of the normal commercial context where efforts to  
10 enforce license restrictions around closed file formats might  
11 otherwise be perfectly fine. Not here.

12 And we're entitled to develop a case and present in  
13 support of our counterclaim evidence relating to all of the  
14 products, not just the product A and B that i2 wishes to say  
15 is in issue because that's what it pleaded in its complaint.

16 So, particularly deceptive or conduct that is  
17 undertaken by artifice to try to enforce-- They are literally  
18 trying to enforce walls between government agencies and the  
19 data transfer between government agencies. And we think that  
20 that raises very, very serious issues. And that's why we're  
21 conducting discovery that gets at what they've done to try to  
22 enforce those restrictions.

23 So, you know, and that's implicated here. It's  
24 implicated in requests 1 through 4 which have to do with  
25 interoperability more generally. And i2 is trying to force

1 this case back into the prism of their own complaint, ignoring  
2 the fact that we have placed in issue a far broader set of  
3 issues having to do with all of its product lines and this  
4 particular business practice.

5 THE COURT: Well, I'll require a response to  
6 document request 33, but limited to the time period from 2006,  
7 and obtain or requested any confidential or trade secret  
8 information from a third party.

9 So, I'm not talking about any information. That is,  
10 if I wrote to somebody and said, please send me your product  
11 brochure and used a different name. It has to be confidential  
12 or trade secret type information for the time period from 2006  
13 to the present.

14 Okay. Document request number 55. Mr. Sundermeier,  
15 are there any documents that would be responsive to document  
16 request number 55? All documents and things relating to any  
17 efforts by you to copy or create something similar to the  
18 features, look and feel.

19 MR. SUNDERMEIER: My--

20 THE COURT: Well, let me hear what your objection is  
21 to that one if you really do have an objection to 55.

22 MR. STREETER: I am trying to remember, Your Honor,  
23 if I, what was the final discussion was there because I  
24 believe we did agree to produce certain information that was  
25 asked for, information relating to competition between the

1 parties. We basically agreed to produce the information  
2 relating to any competitive intelligence on Palantir.

3 So, I don't think that, I am not sure this one is  
4 still even at issue. But again, I'm not sure-- The fact is  
5 that like all companies, we keep track of what other  
6 competitors are doing in the marketplace, and look at new  
7 developments and features. That's different than going and  
8 taking their technology, but-- And we agreed to produce that  
9 kind of competitive intelligence with respect to Palantir.

10 We objected to this request I think primarily  
11 because this is going to their two wrongs don't make a right  
12 defense or two wrongs do make a right defense.

13 We're not sure what this has to do with the case.  
14 There is no issue here as to whether or not, there is no  
15 allegations that we stole their technology or that we copied  
16 their technology. They haven't identified any of our  
17 features. In fact, all they do is say our features are  
18 essentially antiquated and outdated, outmoded. And they  
19 aren't saying that we have taken any features from them.

20 So, to ask for this kind of specific request seems  
21 irrelevant.

22 If there is something there, Your Honor, we had this  
23 discussion, if they think there is something we took from them  
24 or that we copied in some way, we can address that issue. But  
25 that's not part of this case as far as I am aware.

1                   MR. STREETER: Your Honor, Palantir takes a very  
2 different view of this situation. Palantir does believe that  
3 i2 has been systematically attempting to mimic Palantir's  
4 product line, and it has done that in a number of ways.

5                   Palantir has a very different approach to business.  
6 It is an open company. It is not a company that tries to  
7 restrict by license or other means what it's doing. So, it's  
8 not a surprise that other customers are trying to meet its  
9 standard.

10                  But what this goes to is causation. If i2 is  
11 attempting to chase Palantir because Palantir has better  
12 features in any number of different areas, and that is the  
13 reason that customers view Palantir as being far superior to  
14 i2, that's going to be highly relevant to causation.

15                  When i2 attempts to claim that it is because of the  
16 importing functionality that was created, that's the reason  
17 that customers switched, we will say, no, it's because our  
18 analytical capabilities were vastly superior. Palantir can  
19 take and analyze data from any data source from around the  
20 world.

21                  I2 is limited to its own file formats, and that  
22 imposes a very tight restriction on what customers can do.  
23 And customers are tending to prefer the way that Palantir sets  
24 up its user interface in any number of ways. And we ought to  
25 be able to show that customers are demanding, wanting a user

1 environment in a--

2 THE COURT: Okay, I understand your argument. I  
3 will require a response to request for production 55. I think  
4 that arguably has some relevance to the issues having to do  
5 with the damages side of this case. And if in fact there are  
6 such documents, they should be produced.

7 Okay. I think that's taken care of the broad range  
8 of documents that have been presented in these motions.

9 Okay. Thank you, counsel.

10 MR. STREETER: Thank you, Your Honor.

11 MR. SUNDERMEIER: Thank you, Your Honor.

12 NOTE: The hearing concluded at 10:15 a.m.

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14 C E R T I F I C A T E   o f   T R A N S C R I P T I O N

16 I hereby certify that the foregoing is a true and  
17 accurate transcript that was typed by me from the recording  
provided by the court. Any errors or omissions are due to the  
18 inability of the undersigned to hear or understand said  
recording.

19 Further, that I am neither counsel for, related to,  
20 nor employed by any of the parties to the above-styled action,  
and that I am not financially or otherwise interested in the  
outcome of the above-styled action.

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/s/ Norman B. Linnell  
\_\_\_\_\_  
Norman B. Linnell  
Court Reporter - USDC/EDVA